IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 1363 of 2005

Between:

V.Kode Thrachu S/o Venkatappaiah
R/o Kallur Village and Mandal, Khamman District.

..... PETITIONER

AND

1 The Joint Collector, Khamman, Khammam district.
2 The Revenue Divisional Officer, Khamman, Khammam district.
3 The Mandal Revenue officer, Kalluru Mandal, Khammam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue a writ of Mandamus or any other appropriate writ or order or direction in the nature of a writ declaring the proceedings of the 2nd respondent in Rc.No.C2/1501/02 dt. 22/12/2004, as illegal, arbitrary, unjust, violative of the principles of natural justice and as violative of the provisions of the Essential commodities Act. 1955, and to set aside the same, and to pass such other order or orders as are necessary in the interests of justice.

Counsel for the Petitioner:MR.J.V.PRASAD

Counsel for the Respondents: GP FOR CIVIL SUPPLIES

The Court, at the stage of admission, made the following :

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ORAL ORDER:

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The petitioner is a Fair Price Shop Dealer of Shop No.III, Kallur village and Mandal, Khammam District. He was issued a show cause notice dated 4.10.2002 by the 2nd respondent directing him to explain as to why the dealership shall not be cancelled, in view of the allegation contained therein. The allegation against the petitioner was that he did not maintain proper account in relation to rice, meant for "Food for Work".

The petitioner submitted his explanation on 18.10.2002. Ultimately, the 2nd respondent cancelled the authorization of the petitioner through his order dated 22.12.2004.

Heard the learned counsel for the petitioner and the learned Government Pleader for Civil Supplies.

Learned counsel for the petitioner submits that the petitioner distributed the essential commodities without any complaint and even as regards the distribution of rice, meant for "Food for Work", there were no discrepancies. It is urged that the

distribution of rice meant for “Food for Work”, is not part of the activities of a Fair Price Shop dealer and no action can be taken against the dealer, for any discrepancy in relation thereof. Learned counsel further submits that the petitioner is virtually disabled from availing any remedy of appeal before the Joint Collector because of the reason that, the order of cancellation was passed, as a consequence of a judgment rendered on 5.11.2004 by the Joint Collector in the proceedings under Section 6-A of the Essential Commodities Act, initiated against him.

Learned Government Pleader for Civil Supplies submits that even if there is any impediment in the matter of availing the remedy of appeal before the Joint Collector, the petitioner can avail the remedy of revision before the District Collector, and that the present writ petition is not maintainable. It is also stated that the 2nd respondent recorded a finding that the petitioner had committed certain irregularities and, as such, he cannot be permitted to function, even after cancellation of dealership.

Before undertaking any discussion on merits, the objection as to maintainability of the writ petition needs to be dealt with. A perusal of the order dated 22.12.2004, passed by the 2nd respondent, discloses that the judgment dated 5.11.2004 rendered by the 1st respondent-Joint Collector, constituted the basis for it. Except referring to the findings recorded therein, the 2nd respondent did not undertake any independent discussion. Therefore, the remedy of appeal under Clause 20 of the A.P. Public Distribution System Control Order, 2001 (for short ‘the Control Order), before the 1st respondent against the order of the 2nd respondent, would virtually be nugatory. However, on that count, a writ petition cannot be entertained straightaway against the order of cancellation. The Control Order provides for revision before the District Collector and the petitioner can avail the same.

It remains to be seen as to whether the petitioner deserves to be continued as dealer till he avails the remedy of revision before the Collector, and submits an application for interim orders. Prima facie, it is evident that two charges were leveled against the petitioner, which read as under:

> **"Charge No.1**
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> The dealer has not entered the issues of FFW rice for the coupons received which is improper maintenance of the register.
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> **Charge No.2**
>
> There are shortage of FFW rice of 6.82 Qtls. And PDS Sugar of 6 Kgs. As per verification of ground balance with stock register."

Both of them relate to the distribution of rice under "Food for Work". In W.P.No.23069 of 2004, while dealing with similar situation, this court held as under;

> "A perusal of the definition of Public Distribution System under sub-clause 2 of Clause 20 of the Control Order discloses that it covers only the activity of distribution of essential commodities to ration cardholders through fair price shops. There is no dispute that the rice meant for "Food for Work" is not meant to be distributed to cardholders. It was obviously for the sake of convenience that the petitioner was required to undertake the distribution of rice meant for "Food for Work". The rice under that scheme is issued by the dealers to the holders of the coupons, which in turn, are issued by the concerned Engineer or Panchayat Raj Staff. A dealer has absolutely no role to play in the matter of issuance of coupons."

Therefore, even assuming that there were any lapses on the part of the petitioner in the matter of distribution of FFW rice, it cannot constitute any basis for cancellation of the authorization. The question as to whether there existed any lapse on the part of the petitioner herein, needs to be considered in the revision.

Hence, the writ petition is disposed of, leaving it open to the petitioner to avail the remedy of revision before the District Collector. If the appeal is presented within four weeks from today, it shall be entertained, as having been presented within the

period of limitation. Till the District Collector passes an order on the application for stay that may be filed by the petitioner, the order dated 22.12.200,4 passed by the 2nd respondent, shall remain stayed and the petitioner shall be entitled to continue as a Fair Price Shop Dealer. There shall be no order as to costs.

CVM 3.2.2005

To,

1. The District Collector, Khammam District, Khammam.

2 The Joint Collector, Khamman, Khammam district.
3 The Revenue Divisional Officer, Khamman, Khammam district.
4 The Mandal Revenue officer Kalluru Mandal, Khammam District.

5. 2 CCs to G.P. for Civil Supplies, High Court buildings,
Hyderabad (OUT).

6. 2 CD copies.